IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

Protect Our Parks, Inc.; Charlotte Adelman; Maria Valencia and Jeremiah Jurevis,	)	
Plaintiffs,	)	No. 18 CV 03424
v.	)	
Chicago Park District and City of Chicago,	)	Judge John Robert Blakey
Defendants.	)	

DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR
MOTION FOR SUMMARY JUDGMENT

TABLE OF CONTENTS

TABLE OF CONTENTS
(cont'd)

Page

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES
(cont'd)

Page(s)

TABLE OF AUTHORITIES
(cont'd)

Page(s)

TABLE OF AUTHORITIES
(cont'd)

Page(s)

Statutes

INTRODUCTION

Plaintiffs ask this Court to overturn the Chicago City Council's decision to authorize use of approximately 19.3 acres of Chicago parkland to host a valuable historical, cultural, and community resource in the form of the City's first presidential center. The Obama Presidential Center ("OPC") will offer among other public benefits a museum containing artifacts and records from the presidency of Barack Obama, the first president elected from Chicago, who served during eight critical years in the Nation's history. Following extensive public hearings and debates, the City's elected representatives determined that locating the OPC on the western edge of Chicago's Jackson Park would bring a host of benefits to the public.

The City Council's considered decision to authorize this use of the Jackson Park site follows from an Illinois statute, the Park District Aquarium and Museum Act ("Museum Act"), which expressly permits and in fact encourages the use of public parkland for presidential centers and museums. The Museum Act recognizes that these institutions "serve valuable public purposes, including, but not limited to, furthering human knowledge and understanding, educating and inspiring the public, and expanding recreational and cultural resources and opportunities." 70 ILCS 1290/1. Thus, both the City Council and the Illinois legislature, through their official actions, are in agreement: siting the OPC in Jackson Park will benefit the public.

These legislative determinations reflect Illinois's long history of enhancing public parkland with cultural and educational structures. Nearly a century ago, the Illinois Supreme Court endorsed another museum in Jackson Park, explaining that "[p]ark purposes are not confined to a tract of land with trees, grass, and seats." Furlong v. South Park Comm'rs, 320 Ill. 507, 511 (1926). Later, the court observed that it was "for the legislature and not the courts" to resolve disagreements between "those members of the public who would preserve our parks and open lands in their pristine purity and those charged with administrative responsibilities who,

under the pressures of the changing needs of an increasingly complex society, find it necessary, in good faith and for the public good, to encroach to some extent upon lands heretofore considered inviolate to change." Paepcke v. Public Bldg. Comm'n, 46 Ill. 2d 330, 347 (1970).

Plaintiffs ask this Court to second-guess the City of Chicago's and State of Illinois's legislative judgment. Their Complaint primarily relies on the state-law public trust doctrine, a narrow limitation on legislative power first recognized in the U.S. Supreme Court's decision in Illinois Central Railroad v. Illinois, 146 U.S. 387, 452 (1892). But the public trust doctrine does not help Plaintiffs, for a variety of reasons.

First, as Illinois Central and subsequent cases make clear, the common-law public trust doctrine principally operates to preserve navigable waters for the public good – and thus limits the ability of legislatures to transfer away *submerged* land. The OPC Site is not submerged and has not been submerged during Illinois's statehood. On summary judgment, following discovery, there can be no genuine factual issue about this. Thus, the land is not held in the public trust under the common law, and the City Council has discretion to authorize use of the land consistent with Illinois law. As mentioned above, the Illinois legislature has, through the Museum Act, expressly authorized the development and operation of presidential centers on parkland. The OPC thus satisfies Illinois law – just like the eleven other privately-operated museums that are currently located on public parkland in Chicago.

Second, even if the common-law public trust analysis applied here – and it does not – Plaintiffs' challenge still would fail. The Illinois Supreme Court laid out the applicable test in Friends of the Parks v. Chicago Park District, 203 Ill. 2d 312 (2003) ("FOP"), a case in which a private entity was authorized to use public parkland even though it had previously been submerged. FOP holds that there is no public trust violation when the City authorizes use of

public parkland by a private entity in a manner that (a) benefits the public and does not *exclusively* benefit the private entity, and (b) allows the public entity to retain ultimate control over the land. Id. at 324-28. Courts should defer to legislative judgments in applying this test. As FOP makes clear, whether private use of public parkland serves a public purpose is a "question[] which the legislature must in the first instance decide." Id. at 320.

Each of these criteria is satisfied here. The legislature has found that development of the OPC in Jackson Park will bring many unique benefits to Chicago and strongly further a public purpose, and the City will retain significant control over the land. Those findings are both entitled to the Court's deference and – especially on summary judgment following discovery – are not subject to genuine dispute on the factual record.

Chicago's first-ever presidential museum, and especially one about the Nation's first African-American president, would provide a unique public benefit to Chicagoans regardless of the particular public park it is in. That benefit is undeniably enhanced by placing it not in the existing "museum campus" near downtown but in a South Side park. It is enhanced further by locating it in a South Side park that is in the very neighborhood where the Obamas lived and worked. And it is enhanced further still by locating it in a park where a world-class museum – the Museum of Science and Industry – is already located, creating the immediate potential for a museum combination that may beneficially be seen as a South Side "museum campus."

In addition, the City's plan for the OPC will provide concrete benefits to Jackson Park as a whole by restoring the original, physical connection between the site – currently an island of land isolated by multiple lanes of traffic – and the rest of the park by transforming adjacent streets into *new* parkland. The historical Olmsted plan had the site as a connected part of Jackson Park. The intervening years have broken that connection. The City's OPC plan restores it. Under

the plan, Jackson Park becomes an integrated, enhanced public space with improved public access (especially for Chicago residents just west of Jackson Park) to a spectacular combination of attractions, including the Museum of Science and Industry, the Wooded Island and lagoons, and the lakefront, along with the OPC.

The public benefit is magnified even further because the cost of building and operating the OPC is borne by The Barack Obama Foundation ("Foundation"), a 501(c)(3), not-for-profit corporation. The official legal documents adopted by the City Council to govern the OPC's construction and the Foundation's use of the site to operate the OPC provide that it is the Foundation's burden to raise from private sources the substantial funds needed to build and operate the OPC. No tax money collected under the Museum Act is legally available to build or sustain the OPC. And not only does the City retain ultimate control over the land, but both the OPC and the parkland within the OPC site will become and remain *public*, not private, property; the City will be the owner, not the Foundation. Revenue from admission fees will be put back into the OPC, as the law requires, to fund its maintenance and operation.

Given this massive bundle of unique public benefits, it is no surprise that the City Council determined that it was in the public interest of the City and its citizens to develop the OPC on this location at the western edge of Jackson Park. On summary judgment, Plaintiffs cannot meet their burden of producing evidence that would allow this Court to conclude that the City Council's legislative judgment was unfounded. Plaintiffs have made it clear that they would have preferred the public benefits that necessarily accompany the OPC to go in a different Chicago location, in and adjacent to a different public park. They are entitled to their opinion. But the elected legislative body of the City of Chicago, upon consideration of an extensive factual record following extensive public hearings and deliberation, approved the

Jackson Park site. That determination that locating the OPC there has substantial public benefits and is in the public interest definitively establishes that there is no violation of the public trust doctrine. Judgment should therefore be entered for Defendants on Plaintiffs' public-trust claim (Count II), their principal claim.

Plaintiffs' remaining follow-on claims clearly fail as well. Their one federal claim, a purported procedural due process claim under the Fourteenth Amendment (Count I), does not and cannot identify any process deficiencies in their or the public's ability to participate in the legislative process here. Instead, Plaintiffs contend that their due process rights were violated because the authorization of the OPC site purportedly violated a variety of state constitutional and statutory requirements. See Compl. ¶¶ 60-81. While they later purported to abandon these theories, stating that their due process claim "is not dependent upon a duty imposed by state law," Dkt. No. 65-1 at 23-24, their claim remains based on Defendants' alleged violation of state law – namely, the public trust doctrine. Plaintiffs' due process claim necessarily fails, therefore, because the OPC does not violate public trust doctrine and Defendants have complied with all applicable statutory and public-trust requirements. The due process claim fails for the independent reasons that a violation of state law does not violate federal due process, and because Plaintiffs do not have a constitutionally-protected private property interest in the OPC site. Plaintiffs' other state-law claims (Counts III-V) fail as well under the plain meaning of Illinois statutory and constitutional provisions.

The OPC offers Chicago a major and unique cultural and historical institution as well as a revitalized and better integrated section of Jackson Park, all owned by the City. It is a singular opportunity for the South Side, for Chicago, and for Illinois. Because there can be no genuine

dispute that the OPC complies fully with all legal requirements, the Court should grant summary judgment for Defendants.

UNCONTESTED MATERIAL FACTS

A. The OPC Site

The Jackson Park site selected for the OPC lies on the western edge of Jackson Park and includes existing parkland bounded by South Stony Island Avenue on the west, East Midway Plaisance Drive North on the north, South Cornell Drive on the east, and South 62nd Street on the south. SUMF ¶ 7. The site is shown on an Existing Land Use Map appended to Planned Development Ordinance SO2018-123. SUMF ¶ 6.

In 1818, when Illinois joined the Union, and in 1869, when the General Assembly authorized the creation of Jackson Park, the OPC site was not submerged under the navigable waters of Lake Michigan. SUMF ¶ 9. Nor is it submerged today. In fact, several features currently separate the OPC site from the lake by approximately half a mile, including six-lane Cornell Drive, the lagoons and Wooded Island of Jackson Park, Jackson Park's golf driving range and other grounds, Lake Shore Drive, and a pedestrian and bike path. SUMF ¶ 7.

The OPC site will include new parkland created by vacating portions of streets adjacent to existing parkland at the site: Cornell Drive between East Midway Plaisance Drive North and East Hayes Drive, and East Midway Plaisance Drive South between Stony Island Avenue and Cornell Drive. SUMF ¶ 7. In total, the site will be 19.3 acres, or 3.5% of the 551.52 acres comprising Jackson Park. SUMF ¶ 6.

B. The Municipal Approval Process

In July 2016, the Foundation announced that it had selected Jackson Park as the site for the OPC. SUMF ¶ 13. In January 2018, the Foundation submitted applications to the City's authorizing bodies proposing to build the OPC on the Jackson Park site. Id. Multiple public

bodies then reviewed and approved the project. This process involved numerous public meetings with extensive opportunity for public comment.

First, the Chicago Plan Commission reviewed the proposed project to ensure conformity with the fourteen policies set out in the Lakefront Plan of Chicago, as well as the thirteen purposes of the Lake Michigan and Chicago Lakefront Protection Ordinance ("LPO"). Municipal Code of Chicago, § 16-4-010, et seq. The Commission also reviewed the Foundation's application for a zoning amendment – an ordinance seeking approval of a planned development for the OPC site ("Planned Development Ordinance"). SUMF ¶ 14. The Commission held a public hearing on May 17, 2018, where representatives of the Foundation and the City's Department of Planning and Development ("DPD") discussed the proposal. Id. More than 75 members of the public commented. Id. The Commission approved the proposal under the LPO and adopted as its findings of fact the staff report prepared by the Department of Planning and Development ("DPD Study"), which also recommended approval of the OPC in Jackson Park. SUMF ¶¶ 13-15. The DPD Study discussed DPD's detailed findings, reached after months of study and deliberation with various parties, including the Foundation, regarding the OPC's public benefits and its compliance with the policies of the Lakefront Plan of Chicago and the purposes of the LPO, and with the purposes and guidelines set forth in the Chicago Zoning Ordinance pertaining to planned developments. SUMF ¶ 13.[1]

[1] In response to Plaintiffs' request for a Rule 30(b)(6) deposition of the City on the topic of the OPC's public benefits, the City produced Eleanor Gorski, the Bureau Chief of Planning, Design, Sustainability, and Historic Preservation in the City's DPD. Ms. Gorski was among the DPD staff who reviewed the Foundation's proposal to locate the OPC in Jackson Park and who prepared the DPD Study. She indicated at her deposition that she had reviewed the study in preparing for the deposition, and she expressly identified the study as a document addressing the public benefits of locating the OPC in Jackson Park. See SUMF, Ex. A, Ex. 27 thereto (Gorski Dep.), at 7, 55. Plaintiffs did not ask Ms. Gorski a single question about the DPD review process

Next, the City Council's Committee on Zoning, Landmarks and Building Standards held a public hearing on May 22, 2018 to consider the Planned Development Ordinance. SUMF ¶ 17. Representatives from the City and the Foundation testified about the ordinance, and members of the public commented. Id. The committee recommended that the full City Council approve the Ordinance, and the City Council did so on May 23, 2018. SUMF ¶¶ 17-18.

After passing the Planned Development Ordinance, the City Council considered and approved two additional ordinances needed for the OPC project. The first was the "Operating Ordinance," which (among other things) authorized the City to accept title to the Jackson Park site from the Park District and enter into agreements with the Foundation governing its use of the site. SUMF ¶ 19. On October 11, 2018, the City Council's Committee on Housing and Real Estate held a public hearing on the Operating Ordinance. Id. Representatives from the City and the Foundation testified about the ordinance, and members of the public commented. Id. The Committee then voted unanimously to recommend adoption of the Operating Ordinance, and the full City Council approved it unanimously on October 31, 2018. Id.

Finally, the City Council considered an ordinance authorizing the City to vacate portions of Midway Plaisance Drive South and Cornell Drive, most of which would be converted into new parkland as part of the OPC site or OPC improvements. SUMF ¶ 20. On October 25, 2018, the City Council's Committee on Transportation and Public Way held a public hearing on that proposed ordinance. Id. Representatives from the City and the Foundation testified, and members of the public commented on the proposal. Id. The Committee voted unanimously to recommend

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or the DPD Study's findings, much less attempt to elicit testimony undermining the study's findings.

adoption of the ordinance, which the full City Council unanimously adopted on October 31, 2018. Id.

C. The Use Agreement

One of the agreements authorized by the Operating Ordinance is the Use Agreement, which sets the terms of the Foundation's use of the Jackson Park site. SUMF ¶ 21. Along with the Planned Development Ordinance, which controls the size and layout of the buildings on the site, the landscaping of the site, and the categories of permitted uses, the Operating Ordinance and Use Agreement govern the OPC's nature and operations.

The Use Agreement authorizes the Foundation to use the site only to operate the OPC. SUMF ¶ 21. Neither the Operating Ordinance nor the Use Agreement allows the City to transfer ownership of the site to the Foundation, and even after construction of the OPC, the City will retain ownership of the OPC site. SUMF ¶ 22. If the Foundation ceases to use the OPC for its permitted uses under the Use Agreement, the City may terminate that contract. SUMF ¶ 21.

D. The OPC's Features

As specified in the governing City ordinances and the Use Agreement, the OPC will consist primarily of open green space, a Plaza, and four buildings. SUMF ¶ 23. It also will include an underground parking garage. Id.

The Use Agreement states that the OPC will include a building central to the OPC's mission called the Museum Building. SUMF ¶ 24. The Museum Building will feature artifacts and records from President Obama's presidency on loan from the National Archives and Records Administration ("NARA") as well as other sources. SUMF ¶ 25. It will tell the stories of the first African-American President and First Lady of the United States, their connection to Chicago, and the individuals, communities, and social currents that shaped their local and national journey. Id.

In addition to the Museum Building, the OPC will offer a variety of cultural and recreational opportunities and programming in additional buildings:

- a Forum Building, which will contain collaboration and creative spaces, including an auditorium, meeting rooms, recording and broadcasting studios, and a winter garden and restaurant (SUMF ¶ 27);
- a Library Building, which will house a branch of the Chicago Public Library with a multimedia collection and spaces for reading and study; and a President's Reading Room, with exhibits relating to the importance of literacy, education, and community service, as well as a selection of books and other materials significant to President Obama (SUMF ¶ 28); and
- a Program, Athletic, and Activity Center, which will allow for formal and informal recreation activities and large-scale indoor programs (SUMF ¶ 29).

The OPC will include extensive open areas, landscaping, and recreational spaces as well. These spaces – defined in the Use Agreement as the "Presidential Center Green Space," "Green Space," and "Plaza," and depicted on Exhibit D to the Use Agreement – will include features such as a sloped lawn for picnicking and recreation, a nature walk along the lagoons and other walking paths, a sledding hill, play areas for children, and natural contemplative spaces. SUMF ¶ 30. Like the rest of Jackson Park, these areas will generally be open to the public during regular Chicago Park District hours. Id.

The Foundation also will preserve and enhance the existing Women's Garden and Lawn, keeping it open and available as green space, while making it more accessible for visitors to Jackson Park. SUMF ¶ 30. Natural landscaping features will integrate some of the buildings into the surrounding green space. SUMF ¶ 26.[2]

[2] As is common in construction projects of this size and scope, certain design details may be refined going forward. For example, the site plan may require modification to account for in-the-field conditions or safety requirements. Any such changes will remain subject to the Planned Development for the OPC, the Use Agreement, and the authorizing ordinances. To the extent that a design change would be so material as to require a new approval from the City, the Foundation will be required to seek and obtain it. Municipal Code of Chicago § 17-13-0611.

E. Construction, Ownership, and Use of the OPC

The Foundation will construct the OPC's buildings at its own expense and, upon completion, transfer ownership of the structures and other site improvements to the City at no charge. SUMF ¶ 34. The Foundation also will maintain the OPC site and buildings at its sole expense for the entire life of the Use Agreement. SUMF ¶ 35. The City is not obligated to enter into the Use Agreement until the Foundation establishes an endowment for the OPC and the site and confirms that it has funds or commitments sufficient to pay projected construction costs. SUMF ¶ 36.

The Foundation must operate the OPC in accord with the Museum Act's free admission requirements, including free admission to all Illinois residents at least 52 days out of the year and to all Illinois school children accompanied by a teacher. SUMF ¶ 37. Further, the Foundation may not use the OPC for political fundraisers or in any manner inconsistent with its status as an I.R.C. § 501(c)(3) "public charity." SUMF ¶ 21.

F. The OPC's Enhancement of Jackson Park

The OPC will add another museum to Jackson Park, joining the Museum of Science and Industry. SUMF ¶ 52. This advances the City's planning goal, as set forth in the 2012 Chicago Cultural Plan, of creating a "Museum Campus South" along the lines of the successful museum campus created in near downtown. Id. Moreover, locating the OPC in Jackson Park will place it near the University of Chicago, the DuSable Museum of African American Art, and other cultural institutions. Id. The DPD Study explained that this will "contribute to and leverage the project over the course of time, ensuring that it is a growing asset for the community." Id. The plans for the OPC also further the City's tradition of developing cultural institutions in parks, including those at or near the lake. SUMF ¶ 49. As the DPD Study explained, locating the OPC in Jackson Park advances the policy of the Lakefront Plan of Chicago to "[p]reserve the cultural,

historical and recreational heritage of the lakeshore parks" because cultural "'[f]acilities attracting users from the entire region . . . are appropriately sited within the lakeshore parks'" and they "'[s]trengthen the regional aspect of the lakeshore parks.'" SUMF ¶ 50. The study also explained that "Jackson Park, like Lincoln Park, is a regional park – and just as the Lincoln Park Zoo, the Chicago History Museum and the Notebaert Nature Museum have welcomed visitors from throughout Chicago and beyond, the Presidential Center will be a local, national and even global destination." Id. The study added that "[t]his is consistent with the unique history of Jackson Park," for "[t]he South Park Commissioners hired Frederick Law Olmsted and Calvert Vaux to design the original South Park system and then hired Olmsted to redesign the original plan to accommodate the World's Columbian Exposition of 1893," when "46 countries were represented, over 20 million admissions were purchased, and dozens of temporary buildings and pavilions were constructed in Jackson Park." SUMF ¶ 51. The study concluded that "[t]he Presidential Center, like the World's Fair, presents a rare opportunity to enhance Chicago's cultural identity. The Presidential Center is anticipated to bring City residents and hundreds of thousands of visitors to Jackson Park and showcase the park's beauty to the nation and world." Id.

By vacating portions of East Midway Plaisance Drive South and South Cornell Drive and converting them into parkland as part of the OPC site, the OPC will eliminate streets now separating the site from the rest of Jackson Park – in particular the Museum of Science and Industry and surrounding parkland to the north and the lagoons and lakefront to the east. SUMF ¶ 38. This will restore the site's connection to the lagoons and the rest of the park, a connection contemplated by Frederick Law Olmsted and Calvert Vaux's 1871 plan for Jackson Park. SUMF ¶ 39.

The OPC also will add new trails and pathways to improve pedestrian access through Jackson Park and allow unimpeded pedestrian and bike access from the site to the Museum of Science and Industry. SUMF ¶ 40. Conversion of paved streets into parkland will reduce the volume of stormwater and associated roadway pollutants and salt spray currently flowing into the lagoon from these streets. SUMF ¶ 43. In addition, converting the streets into parkland will improve the area's acoustics, reduce air and noise pollution, improve bird habitats, and attract new wildlife to this area of Jackson Park. SUMF ¶¶ 44, 47.

In addition to street closures at the OPC site, the City will close, expand, or reconfigure other streets running through or next to Jackson Park, including Stony Island Avenue and Lake Shore Drive. SUMF ¶ 45. This additional work will further improve public access to Jackson Park by eliminating bisecting roadways inside the park and reconnecting segmented park space, while adding infrastructure improvements such as pedestrian access points and ADA-compliant design features, curb extensions, pedestrian refuge islands, high-visibility crosswalk markings, and pedestrian underpasses. SUMF ¶ 46.

In total, the DPD Study found that the roadway work in connection with the OPC will create a net gain of 4.7 acres of publicly available park space throughout Jackson Park. SUMF ¶ 45.

G. The OPC's Economic Benefits

In October 2016, following the Foundation's selection of the Jackson Park site for the OPC, the Chicago Community Trust commissioned Deloitte Consulting LLP ("Deloitte") to assess the OPC's economic impact on various government and geographic entities, such as the state of Illinois, the City of Chicago (using Cook County as a proxy for the City), and the South Side. SUMF, Ex. A, Ex. 25 thereto (Deloitte Economic Impact Assessment). The Deloitte study estimated that constructing the OPC would add approximately 4,945 new jobs in Cook County,

with approximately 2,536 new jobs created and sustained by the OPC's later operation. SUMF ¶ 55. The study also estimated 760,000 annual visitors to the OPC. Id.

For Cook County, Deloitte estimated the total economic impact of the project's construction phase to be $675 million and the total annual economic impact of the OPC's full operation to be $246 million. SUMF ¶ 55. The study estimated the corresponding state economic impacts to be $883 million and $266 million, respectively. Id. Deloitte also projected that building and operating the OPC would increase the tax base for state and local governments, with annual revenue increases of $11.3 million in state and local taxes in Cook County. Id. A University of Chicago-commissioned study found comparable economic benefits to the South Side. SUMF, Ex. A, Ex. 26 thereto (AEG Economic Impact Assessment).

H. The City Council's Findings

Operationally, the City Council determined that the City needed to assume ownership of the OPC site from the Park District. The City Council had made a formal finding that, during the selection process for a city and site to host the OPC, "the Foundation expressed concerns regarding the City's lack of control" over both the Jackson Park site and a potential site in Washington Park. SUMF, Ex. A, Ex. 11 thereto (2015 Ordinance), at 105099. In the Operating Ordinance, the Council also found that "the City, with its home rule authority and large planning, transportation and other infrastructure departments, is well-situated to facilitate the various large-scale infrastructure and investment initiatives in and around the OPC and to oversee the development and operation of the OPC in accordance with the agreements as described herein." SUMF, Ex. A, Ex. 9 thereto, at 85878.

Turning to the OPC's effects, the City Council determined that the OPC would benefit the City and the public in numerous ways. Most obviously, locating the OPC in Chicago would offer residents the opportunity to experience a presidential museum "telling the story of our

nation's first African-American President and First Lady, their journey to the White House, [and] their historical connection to Chicago." Id. at 85876. Additionally, work at the site would beautify the grounds, and the Foundation would provide ongoing financial and operational support for public historical, cultural, and recreational enrichment activities. Id. at 85883. The City would receive title to all OPC buildings and improvements at no charge, while the Foundation would operate, maintain, and insure such buildings and improvements for the term of the Use Agreement. Id. The City Council further concluded that "locating the OPC in Jackson Park will generate momentum for the development of a 'Museum Campus South,' one of the initiatives identified in the Chicago Cultural Plan of 2012, which has the goal of connecting major institutions on the South Side and creating new opportunities for collaboration and growth." Id. at 85878. Moreover, "construction of the OPC and development of the OPC Site will support local businesses and encourage additional investments in the area." Id. at 85882.

The Council thus explained that "the Foundation's selection of Chicago for the OPC is a great honor and unparalleled opportunity for the State of Illinois, all of the City, and especially the South Side[, and] the location of the OPC in Jackson Park will underscore the vital role the OPC plays in the public life of Chicago and will encourage greater use and enjoyment of the park and lakefront." Id. at 85885. "[I]n sum," the Council concluded, "the OPC will feature a museum that memorializes and examines President Obama's historic presidency within the larger story of American history, inspire visitors to engage actively in their own communities, showcase the South Side and Jackson Park to the nation and world, enhance the park's recreational value, attract cultural tourism to the South Side, create direct and indirect economic development benefits, strengthen Chicago's reputation as a global city, and enable the City to directly advance its previously adopted Cultural Plan." Id. at 85886.

ARGUMENT

"[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). While a plaintiff may survive a Rule 12 motion by "simply alleg[ing]" a harm, Reynolds v. CB Sports Bar, Inc., 623 F.3d 1143, 1153 (7th Cir. 2010), at the Rule 56 stage, a plaintiff must establish that its case could convince a jury, Bank of Ill. v. Allied Signal Safety Restraint Sys., 75 F.3d 1162, 1168 (7th Cir. 1996) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)); see also Davis v. Carter, 452 F.3d 686, 697 (7th Cir. 2006) ("[W]hen the evidence provides for only speculation or guessing, summary judgment is appropriate."); Springer v. Durflinger, 518 F.3d 479, 484 (7th Cir. 2008) ("[A] collective hunch about the defendant's motives . . . will not survive a motion for summary judgment.").

Plaintiffs have now had the opportunity to conduct broad document discovery of both Defendants as well as two third parties: The Foundation and the University of Chicago. Plaintiffs received thousands of pages of documents relating to the OPC from these parties. Plaintiffs also conducted a Rule 30(b)(6) deposition of the City. All material facts have been developed, and the resulting record confirms that the OPC is lawful. Defendants are entitled to summary judgment because there is no genuine issue of material fact, and Plaintiffs' claims fail as a matter of law.

I. The OPC Does Not Violate The State Public Trust Doctrine (Count II).

Plaintiffs do not and cannot show that the OPC will violate the public trust doctrine. Because the OPC site has never been submerged during Illinois's statehood, the only question before the Court is whether the Illinois legislature – the body that caused this non-submerged site to be parkland in the first place – has authorized the land to be used for a presidential center. The

legislature did so in the Museum Act, which expressly permits the use of parkland for presidential centers. As Paepcke confirms, that is the legislature's choice to make.

Moreover, even if a common-law public trust analysis applied, Plaintiffs' claims still would fail. The OPC indisputably will provide a host of benefits to the public, and the City will retain ownership and control over the site. In this respect the OPC is comparable to the several other museums that have long stood in Chicago parks – including the Museum of Science and Industry in Jackson Park – which are likewise privately operated pursuant to agreements with the government entity owning the parkland.

A. Because The OPC Site Is Not Formerly Submerged Land, The Legislature's Determination In The Museum Act Controls The Public Trust Analysis.

1. An Illinois Central Common-Law Public Trust Does Not Apply To The OPC Site.

As announced by the U.S. Supreme Court in Illinois Central Railroad v. Illinois, 146 U.S. 387, 452 (1892), a common-law public trust applies to lands held by the State that are under navigable waters. The Illinois Central Court explained that "the State holds the title to the lands under the navigable waters of Lake Michigan," so that the public "may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein freed from the obstruction or interference of private parties." Id. at 452. The rationale for the doctrine is straightforward – navigable waters are by nature a public good, used by the public for purposes such as "navigation," "carry[ing] on commerce," and "fishing." Id. The doctrine prevents the State from transferring ownership of land submerged under navigable waters to a private entity, unless the land is "used in promoting the interests of the public therein, or can be disposed of without any substantial impairment of the public interest in the lands and waters remaining." Id. at 453.

But the undisputed facts show that the OPC site *is not submerged.* Anyone walking past can see that the site is not currently under water. And that has been the case for Illinois's entire statehood. The OPC site is located entirely within the western halves of the southwest and northwest quarters of Section 13 of Township 38 North, Range 14 East. SUMF ¶ 8. As official government maps from federal government surveys in 1822 and 1834 demonstrate, this portion of Section 13 was *not* submerged under Lake Michigan on those dates, and there is no evidence that it was submerged shortly before that, in 1818, when Illinois achieved statehood. Id. ¶ 9; see Wilton v. Van Hessen, 249 Ill. 182, 188 (1911) (date Illinois joined the Union is relevant date for vesting "title to the beds of all navigable lakes and bodies of water within its borders").

In fact, the OPC site was originally held not by the State, but by the *federal government* before being sold to *private owners* in the 1830s and 1840s. SUMF ¶ 10. And from the beginning, it has been settled that "the title which the United States hold in the public lands which are open to preemption and sale" is "different" from the common-law title held by Illinois over lands under navigable waters; only the latter is "held in trust of the people of the state." Illinois Central, 146 U.S. at 452. This alone means that the OPC site is not subject to a common-law public trust under Illinois Central.

2. Because The OPC Site Is Subject To A Public Trust Only By Virtue of Statute, The Museum Act Disposes Of Plaintiffs' Public Trust Claim.

In the absence of an Illinois Central, common-law public trust, Plaintiffs contend that the General Assembly's 1869 law establishing Jackson Park (the "1869 Statute") created a statutory "public trust" on the site. See Compl. ¶¶ 27-29, 90 (discussing An Act to Provide for the Location and Maintenance of a Park for the Towns of South Chicago, Hyde Park and Lake,

Private Laws, 1869, vol. 1, p. 358 et seq.).[3] But the General Assembly is free to specify the uses to which legislatively created public parkland can be put, and it unambiguously did so here in the Museum Act. The 1869 Statute therefore cannot sustain Plaintiffs' public-trust claim.

a. The Museum Act Authorizes The OPC.

Under Illinois law, where the General Assembly establishes parkland on then-existing land, legislators retain the right to authorize development on that parkland so long as the statute allowing that development includes a "sufficient manifestation of legislative intent to permit the diversion and reallocation." Paepcke, 46 Ill. 2d at 342 (1970). Paepcke – which also involved the 1869 Statute – thus holds that when a public trust attaches to a parcel of land only because (unlike under the common-law rule) the *legislature* chose to create that trust by statute, legislators always remain free to authorize new uses for that land. It "would be contrary to well established precedent" to hold that the General Assembly could never "change or reallocate" its own 1869 dedication. Id. at 340.

This holding follows from the longstanding rule that "the legislature represents the public," and "[s]o far as concerns the public, it may authorize one use [of land] to-day and another and different use tomorrow." People ex rel. Bransom v. Walsh, 96 Ill. 232, 250 (1880); see also Reichelderfer v. Quinn, 287 U.S. 315, 318 (1932) ("By dedicating the lands thus acquired to a particular public use, Congress declared a public policy, but did not purport to deprive itself of the power to change that policy by devoting the lands to other uses. The

[3] The 1869 Statute created the South Park Commissioners (a predecessor to the Chicago Park District) and directed them to acquire lands encompassing today's Jackson Park. See Compl. ¶ 27; 1869 Statute, §§ 1, 4. The Commissioners and their successors were to hold the land "as a public park, for the recreation, health and benefit of the public, and free to all persons forever, subject to such necessary rules and regulations as shall from time to time be adopted by said commissioners and their successors." 1869 Statute, § 4; see also Clement v. O'Malley, 95 Ill. App. 3d 824, 828 (1st Dist. 1981) (explaining that Jackson Park was created by, and is subject to, the 1869 Statute).

dedication expressed no more than the will of a particular Congress which does not impose itself upon those to follow . . . ."). Indeed, under Illinois law, "[p]roperty devoted to the public use may be taken by authority of the legislature for a different public use, even if" – quite unlike the situation here – "*the earlier enterprise is thereby wholly destroyed.*" People v. Ill. State Toll Highway Comm'n, 3 Ill. 2d 218, 234 (1954) (emphasis added).

By its terms, the Museum Act provides a clear "manifestation of legislative intent" that satisfies the statutory form of public trust doctrine that applies here. Paepcke, 46 Ill. 2d at 342. The Museum Act specifically contemplates the construction and operation of presidential centers on parkland. Its opening sentence states that cities and park districts with control or supervision over public parks are "authorized to purchase, erect, and maintain within any such public park or parks edifices to be used as aquariums or as museums of art, industry, science, or natural or other history, *including presidential libraries, centers, and museums* . . . ." 70 ILCS 1290/1 (emphasis added).

The Museum Act also expressly authorizes the City to contract with the Foundation to build and operate a presidential center: Cities are authorized to "permit the directors or trustees of any corporation or society organized for the construction or maintenance and operation of an aquarium or museum as hereinabove described to erect, enlarge, ornament, build, rebuild, rehabilitate, improve, maintain, and operate its aquarium or museum . . . and *to contract* with any such directors or trustees of any such aquarium or museum *relative to the erection, enlargement, ornamentation, building, rebuilding, rehabilitation, improvement, maintenance, ownership, and operation of such aquarium or museum.*" Id. (emphasis added).

Further, the statute states that it governs "any" public park controlled by a city or park district. Contrary to Plaintiffs' claim, see Compl. ¶ 79, it is clear that the statute need not refer to

Jackson Park specifically by name. In Paepcke, the Illinois Supreme Court held that later-enacted statutes authorized facility construction in Washington Park (which, like Jackson Park, became parkland under the 1869 Statute) even though those subsequent laws did not specifically identify Washington Park or acknowledge the 1869 Statute's dedication. See Paepcke, 46 Ill. 2d at 343. It was enough that the later statutes "evidenced an intention on the part of the General Assembly to . . . authoriz[e] the program of school and recreational facilities in parks." Id. at 342-43. Exactly the same is true here.

b. Plaintiffs' Attempts At Avoiding The Museum Act Fail.

In their Complaint and prior briefing and argument in this case, Plaintiffs have tried to resist the conclusion that the Museum Act authorizes the OPC on several grounds. None is persuasive.

First, Plaintiffs argue that the form of agreement authorized by the Museum Act is limited to leases. E.g., Dkt. No. 85-2 at 3. But the plain language of the statute shows otherwise, for the Museum Act authorizes municipalities "to contract" generally with third parties to operate museums. Cf. Furlong, 320 Ill. at 511 (upholding South Park Commissioners' authorization of private corporation to renovate and operate museum building in Jackson Park). The Use Agreement, which authorizes the Foundation to erect, maintain, and operate the OPC, is precisely a type of contract contemplated by the Museum Act.

Second, Plaintiffs contend that the Museum Act "does not release" the 1869 statutory dedication that the site be used as parkland. Comp. ¶ 80; 1869 Statute, § 4. But the Museum Act need not negate the 1869 Statute to have effect. The Act reflects the legislature's binding determination that presidential centers, like other museums, are *consistent with* a parcel's designation as parkland – *i.e.*, that use of land for a presidential center or other museum is "for the recreation, health and benefit of the public." 1869 Statute, § 4. It is well established that

"[p]ark purposes are not confined to a tract of land with trees, grass, and seats" and that the "construction of and maintenance of a building for museums, art galleries, botanical and zoological gardens, and many other purposes, for the public benefit, are recognized as legitimate purposes." Furlong, 320 Ill. at 511.

Indeed, the claim that the Act does not authorize museums in parkland is flatly inconsistent with centuries of practice in Chicago. Eleven other privately-operated museums currently operate in Chicago parks. Plaintiffs' argument would cast doubt over the status of these museums, including the Museum of Science and Industry and the DuSable Museum of African American History, which like the OPC are located in parkland created by the 1869 Statute.

Third, there is nothing to Plaintiffs' claim that, because it will charge admission fees, the OPC will violate the 1869 Statute's requirement that dedicated lands be "free to all persons forever." See Compl. ¶ 66. Established law holds otherwise. "The mere existence of admission charges to public facilities, such as the museums and attractions in Burnham Park, as well as the stadium and parking facilities, does not impair the right of citizens to enjoy the use of public property." FOP, 203 Ill. 2d at 324; see also Clement v. O'Malley, 95 Ill. App. 3d 824, 834 (1st Dist. 1981) (upholding admission fee for Jackson Park driving range, despite 1869 Statute, because fee "does not as such render the facility closed to the public, provided such fees are reasonable for the general population of the community"). Section 1 of the Museum Act expressly authorizes admission fees, so long as the museum offers free admission to all Illinois residents 52 days a year and throughout the year to Illinois school children accompanied by a teacher. 70 ILCS 1290/1. The Use Agreement requires the OPC to comply with these terms. See SUMF, Ex. A, Ex. 9 thereto, Ex. D thereto (Use Agreement), § 6.1.

B. Plaintiffs' Public Trust Claim Also Fails Easily Under The Standard That Applies To Lands Submerged Under Navigable Waters.

Plaintiffs allege that because unspecified portions of Jackson Park were formerly submerged under Lake Michigan, the legislature's determination in the Museum Act that a presidential center is appropriate for Jackson Park does not control, and the Court may therefore, itself, assess whether the OPC is in the public interest. See Compl. ¶¶ 45, 81. But Plaintiffs have not proffered any evidence showing that the OPC site is on land previously held by Illinois as lakebed under navigable waters or contradicting Defendants' showing that the site was owned by the federal government and sold to private parties.

Even in the case of a public trust claim based on formerly submerged land, however, the Illinois Supreme Court has held that a court's review of the proposed project is limited and deferential. Specifically, where the legislature has appropriately determined that a proposed use of public land would benefit the public and the government retains ownership of the land, there is no public trust problem even if a private entity may "also benefit" from the proposed use. FOP, 203 Ill. 2d at 320-28.

In FOP, the Court upheld renovations to Soldier Field and surrounding parkland, notwithstanding that the renovations benefitted the Chicago Bears, a private, for-profit entity. The buildings and parkland at issue in FOP were located in Burnham Park, which (unlike the OPC site) was once submerged under the navigable water of Lake Michigan. Id. at 326. Invoking Paepcke, the court in FOP reasoned that the General Assembly had authorized public financing for renovating government-owned stadiums and that the renovation would provide substantial public benefits: "a fully renovated, multiuse stadium" available for "athletic, artistic, and cultural events" and parkland upgrades providing "better access to the stadium, the museums, and the lakefront generally." Id. at 328. The court further reasoned that a government entity would own

the stadium and by contract retain control over its use by the Bears. Id. at 327. Based on these undisputed and important public benefits, the FOP court held that the project "d[id] not violate the public trust doctrine even though the Bears will also benefit from the completed project." Id. at 328.

If FOP applied here – and it does not, for no evidence shows that the OPC site was formerly submerged – Plaintiffs' claims still would fail. The OPC provides valuable public benefits; the City will retain control over the site; and the public benefits vastly outweigh the purported "private" benefits to the Foundation. This conclusion is consistent with the General Assembly's determination to extend the Museum Act's authorization of presidential centers and other museums on parkland to "parks located on formerly submerged land." 70 ILCS 1290/1.

1. The OPC will provide valuable public benefits.

Eleven other museums currently exist on Chicago parkland. As the existence of those museums illustrates, state and local policymakers have long recognized that museums – including parkland museums – are an important public good. The General Assembly codified this recognition in the Museum Act, which states that parkland aquariums, presidential centers, and museums "serve valuable public purposes, including, but not limited to, furthering human knowledge and understanding, educating and inspiring the public, and expanding recreational and cultural resources and opportunities." 70 ILCS 1290/1. Further, as the Plan Commission observed, locating cultural institutions like museums in parks is appropriate because some people "rely most on the public parks for their cultural and recreational experiences." SUMF ¶ 49.

The OPC will offer all of these benefits and more – a proposition that Plaintiffs cannot dispute. As discussed above, the Museum Building and other structures will comprise a campus providing unparalleled historical, cultural, and recreational experiences to the public. See supra at 9-13. Development of the OPC in Jackson Park will allow neighborhood residents and the rest

of the City and world to learn of the journey and legacy of our nation's first African-American President and First Lady, as well as the first President elected from the City of Chicago.

Beyond the buildings, the OPC project will add parkland to Jackson Park and enhance existing parkland with features including a sloped lawn for informal picnicking and recreation, a nature walk along the lagoons to the east, other walking paths, a sledding hill, play areas for children, and natural contemplative spaces. SUMF ¶ 30. Much of the built space will be woven into the surrounding parkland with engineering techniques such as green roofs or below-ground placement. SUMF, Ex. A, Ex. 1 thereto (Planned Development Ordinance), at 77200-11. And the improved parkland generally will be open during regular Chicago Park District hours. SUMF, Ex. A, Ex. 9 thereto, Ex. D thereto (Use Agmt.), § 6.2. Currently, the OPC site consists mainly of open green space, as well as a playground and track and field facility nearing the end of its useful life. The OPC thus will renew the site, just as the plan in FOP did. See FOP, 203 Ill. 2d, at 328 ("The public [would] now enjoy a fully renovated, multiuse stadium, instead of a deteriorating 78-year-old facility."). Indeed, even the track and field facility will be revitalized, as the Park District will construct a new facility nearby. See Dkt. No. 28-1, Exs. C-D.

Finally, these changes will enhance Jackson Park as a whole and its attractiveness to, and use by, residents and visitors. Just as the Soldier Field renovations created "better [public] access to the stadium, the museums, and the lakefront generally," FOP, 203 Ill. 2d at 328, converting portions of Cornell Drive and Midway Plaisance Drive South to open parkland will connect the site to the Jackson Park grounds immediately to the north and east, add new trails and pathways, improve bicycle and pedestrian access to lagoons and the lakefront for those coming from the west of Jackson Park, and enhance the area's overall attractiveness. SUMF ¶ 46. Further, by increasing connectivity between the site and the Museum of Science and Industry, the OPC will

help the City and Park District create a "Museum Campus South," SUMF ¶ 52, a major goal that will mirror the success of the recently-created museum campus in Burnham Park consisting of the Field Museum, the Shedd Aquarium, and the Adler Planetarium, and whose establishment involved relocating Lake Shore Drive. Converting street segments into parkland also will reduce stormwater and pollutant flows into the lagoon and improve the park's acoustics and wildlife. SUMF ¶ 43.

At summary judgment, these myriad public benefits cannot reasonably be disputed. The court in FOP demonstrated that a court's review of the public benefits of a project is limited to the handful of official documents governing the renovation: "the Act, the implementing agreements, [and] the project documents." FOP, 203 Ill. 2d at 327; see also id. at 315-19 (explaining that "[t]he terms and conditions of the project are set out principally in three separate agreements"). The plaintiffs in FOP introduced expert testimony purportedly discrediting the anticipated public benefits from the renovation project, but, as the Illinois Supreme Court observed with favor, the trial judge held that this testimony was "irrelevant," for courts are not to "inquir[e] into the merits or accuracy of the legislative findings." Id. at 319-20.

Indeed, rather than challenge the fact that the OPC will provide a variety of important public benefits, Plaintiffs' claim centers on the argument that an alternative site – Washington Park – is a better site for the OPC. But in FOP, the Illinois Supreme Court did not undertake to determine whether the Park District might have developed a new stadium at a location other than Soldier Field. The court carefully limited its review only to whether the selected project, on the selected site, was in the public interest and remained subject to public control. Nor would a test requiring analysis of alternative sites be remotely workable in any event. Public trust plaintiffs could posit innumerable alternative sites for a project, each with arguable advantages and

disadvantages. And unlike the manageable task of ensuring that a selected site offers public benefits and remains under government control, courts would have to assume the unprecedented role of judicial zoning boards, comparing the relative merits of a host of plaintiff-selected alternatives to the choice made by elected representatives after lengthy public comment and debate.[4]

Finally, Plaintiffs complain that the Foundation will provide digital rather than physical access to presidential records. See Compl. ¶ 4. But the public trust analysis does not call on the Court to weigh all possible alternatives for a proposed development and choose the Court's favorite. The only question before the Court is whether the legislature has violated the public trust doctrine by authorizing a use of public trust land that has no public purpose. The public trust doctrine certainly does not forbid presidential centers from taking advantage of new technology to maximize public benefits. As the Illinois Supreme Court has recognized, "[w]hat is a 'public purpose' is not a static concept, but is flexible and capable of expansion to meet the changing conditions of a complex society." FOP, 203 Ill. 2d at 320-21 (citation omitted).

2. The City will own the OPC site and buildings and retain control over the site through the Use Agreement.

In addition to its many public benefits, the OPC project satisfies the second factor the Court considered in FOP. The site will be owned by a public entity – the City. Plaintiffs do not dispute that the Use Agreement "contains the terms under which the Foundation will construct and use the OPC," Dkt. No. 65-1, at 9, and nothing in that Agreement or the Operating Ordinance authorizes the City to transfer ownership to the Foundation. Rather, after the

[4] Not surprisingly, there is no precedent for such a comparative approach to the public trust inquiry. On the contrary, so long as the government's selected use and site serve a public rather than a predominantly private purpose, courts do not ask whether the public benefits could be greater if the project were located elsewhere. Cf. Empress Casino Joliet Corp. v. Giannoulias, 231 Ill. 2d 62, 87 (2008) (explaining that so long as project provides a public benefit, "the question of how much benefit the public derives is for the legislature, not the courts").

Foundation completes construction of the OPC buildings and other site improvements – which the Foundation will do at its sole expense – it will transfer ownership of them to the City at no cost. SUMF, Ex. A, Ex. 9 thereto, Ex. D thereto (Use Agmt.) § 4.4. The project will therefore *increase* public ownership of parkland resources.

Friends of the Parks v. Chicago Park District, 2015 WL 1188615 (N.D. Ill. Mar. 12, 2015) ("Lucas I"), and Friends of the Parks v. Chicago Park District, 160 F. Supp. 3d 1060 (N.D. Ill. 2016) ("Lucas II"), are therefore readily distinguished. There, the agreement was a 99-year ground lease with options to renew that also granted ownership of the museum building and related improvements to the private museum corporation. See Lucas II, 160 F. Supp. 3d at 1067–68. The court found – in resolving a motion to dismiss at the pleading stage – that the plaintiffs had pleaded a putative lack of control based on Illinois case law supposedly showing that long-term leaseholders may be "owners" in a "constitutional sense." Id. at 1068.[5] By contrast, this case is at summary judgment, and the undisputed facts show that the concerns about public control at issue in Lucas are not present here. The City will own the OPC site and the buildings, and the agreement between the OPC and the City is not a lease. Like other Chicago museums in public parkland, the OPC is governed by a Use Agreement under which the City retains control of the OPC site and permits the Foundation to use the site only to the extent it complies with that contract. SUMF, Ex. A, Ex. 9 thereto, Ex. D thereto (Use Agmt.), § 2.1; id., Article VI.

The Use Agreement makes clear that the Foundation may use the site only for the OPC and authorized events, see id. § 6.1; that the Foundation must allow public access to OPC buildings essentially to the same extent as all other Chicago parkland museums, see id.

[5] Defendants disagree with this legal conclusion. As explained in the text, however, there is no need to reach the question in this case because the agreement between the OPC and the City is not a lease.

§ 6.2(a)(i); and that the OPC's open spaces must generally remain open to the public during regular Chicago Park District hours, see id. § 6.2(a)(ii). The Foundation also must provide the City with an annual report on the OPC's operations and, with representatives from the City, form an Advisory Operations Committee to address ongoing operational issues related to the OPC and to adjacent and nearby areas in Jackson Park. See id. §§ 17.3, 17.4. These contractual ownership and control provisions allow the people's representatives in City government to ensure that the OPC provides the benefits promised by the Foundation.

Indeed, under the Use Agreement, the City retains no less (and perhaps more) control over what the Foundation may do on the OPC site than the Park District retains under the use agreements governing many other Chicago parkland museums. For instance, the 1929 agreement establishing the Museum of Science and Industry in Jackson Park provides that the land and building "may be forever used, managed, operated and controlled by the Museum Corporation for the objects and purposes of an Industrial Museum" and that the "Museum Corporation shall have the sole management, charge, control and operation of the said building and premises . . . ." SUMF, Ex. A, Ex. 21 thereto (March 1929 MSI Agreement), Art. I & VI. Likewise, the 1925 use agreement governing the Shedd Aquarium granted a private society the right to construct and "permanently" maintain and operate the Aquarium on lands that had "been reclaimed from the waters of Lake Michigan and form a part of Grant Park" and gave the private society "sole charge and control of the aquarium … and all other matters connected with the maintenance, management and operation of the aquarium properties." SUMF, Ex. A, Ex. 22 thereto (1925 Shedd Aquarium Agreement), Art. I & IV; see also id. (2001 Third Supp. Agmt.), Art. I (reiterating in 2001 amendment authorizing expansion of aquarium that society will

"permanently maintain and operate such aquarium and oceanarium, including the Expansion Facilities thereon").[6]

In light of this history, there can be no claim that the City has transferred public control over the OPC site in violation of the public trust. See FOP, 203 Ill. 2d at 327 (no public trust violation where the Park District "is, and will remain, the owner of the Burnham Park property," and "[t]here is no abdication of control over the property to the Bears").

3. The Foundation is required to use revenues to support the OPC, and any alleged private benefits to the Foundation are de minimis compared to the public benefits.

Even if the myriad public benefits the OPC will provide were not themselves sufficient to reject Plaintiffs' public trust claim (and they are), Plaintiffs' efforts to cast this project as a giveaway to private interests are easily dismissed. A central theme of the Complaint is that the Foundation stands to benefit from the OPC. But that is true of every not-for-profit entity permitted to build and operate a facility that is central to its purpose. As the Supreme Court recognized in FOP, nearly any public project involving a private entity will help that entity in some way, but the public trust is satisfied so long as the public benefits too. See 203 Ill. 2d at 321. As described above, the public benefits from the OPC project are undeniable.

In FOP, the Court upheld the Soldier Field renovations "even though the Bears [would] also benefit" by using the renovated stadium to charge admission for football games played by a

[6] The 1915 agreement authorizing the Field Museum similarly permits the private museum corporation to build a museum for its permanent use, and grants ownership of the building to the corporation so long as it is used for a natural history museum. SUMF, Ex. A, Ex. 23 thereto, at 3 ("The Commissioners agree to permit the Museum and the Trustees thereof to erect and maintain an edifice upon the proposed museum site . . . and to provide the said site for said Museum and devote the said site to the permanent use of said Museum without cost to it."); id. at 4 ("If at any time the Trustees of said Museum shall cease to use said building for a museum as contemplated by this contract, all rights of said Museum in the above described site and the building situated thereon shall at once cease and determine, and said building shall thereupon be and become the property of the Commissioners.").

private sports franchise. Id. at 324-25, 328. The court recognized that, under public trust analysis, the financial benefits to the Bears did "not diminish the fact that the renovated Soldier Field will be used and enjoyed by the public for a wide variety of public purposes." Id. This case is even easier. The fees collected by the Foundation for admission and parking are required to go back into the OPC, further benefitting the public. SUMF, Ex. A, Ex. 9 thereto, Ex. D thereto (Use Agmt.), § 6.9. On top of this, any benefit to the Foundation is offset by its agreement to pay all of the OPC's construction, maintenance, and operating costs, see id. §§ 4.1, 7.1, sparing the public those expenses even though the Illinois Supreme Court has approved use of tax revenue to fund museums in parks. See Furlong, 340 Ill. at 369. Thus, even more clearly than in FOP, no purportedly private benefit undermines the project's lawfulness under the public trust doctrine.

* * *

In sum, the OPC project easily survives Plaintiffs' public trust challenge. Illinois never held the site in public trust under the common-law rule – it is not reclaimed lakebed and was actually owned and sold to private parties by the federal government – and Paepcke's standard for legislatively created parkland is readily met. In any event, even if the site had been submerged, the project satisfies the FOP standard applied in such cases.

II. Plaintiffs' Federal Due Process Claim Fails (Count I).

Plaintiffs also allege that placing a presidential center in Jackson Park violates their procedural due process rights under the federal Constitution. The elements of a procedural due process claim are (1) a cognizable property interest, (2) a deprivation of that interest, and (3) inadequate process. Palka v. Shelton, 623 F.3d 447, 452 (7th Cir. 2010).

A. Plaintiffs Received All Process They Were Due.

Generally, "[t]he essence of due process" is notice and an opportunity to be heard. Mathews v. Eldridge, 424 U.S. 319, 348 (1976); see also Doherty v. City of Chicago, 75 F.3d

318, 323 (7th Cir. 1996). Plaintiffs do not claim a lack of notice or the opportunity to be heard at the public meetings approving the OPC. Nor could they, for all of the Park District and City meetings were open to the public, and substantial public comment was permitted. See SUMF ¶¶ 14, 16-17, 19-20.

The due process claim is especially meritless because governing bodies – like those that made the decisions relevant to the OPC – "may legislate[] without affording affected parties so much as notice and an opportunity to be heard," even when legislation impacts protected property interests. Pro-Eco, Inc. v. Bd. of Comm'rs of Jay Cty., Ind., 57 F.3d 505, 513 (7th Cir. 1995); Philly's v. Byrne, 732 F.2d 87, 92–93 (7th Cir. 1984) ("[N]otice and opportunity for a hearing are not constitutionally required safeguards of legislative action."). When a legislative body acts, affected individuals "have the opportunity to contest the legislative determination through the processes of representative government." Dibble v. Quinn, 793 F.3d 803, 809–10 (7th Cir. 2015); Indiana Land Co. v. City of Greenwood, 378 F.3d 705, 710 (7th Cir. 2004) (noting that when legislation impacts a large number of people, those people can "mobilize political resistance"). Plaintiffs, just like every other citizen with a "fractional beneficial interest" in Jackson Park, thus received all the process they were due when they were able to participate in the extensive legislative processes that led to the designation of the OPC site.

B. Plaintiffs Suffered No Deprivation.

Plaintiffs explain that their due process claim "is that the Jackson Park Site contains a restriction placed on the property by the State of Illinois" – namely, that, under the 1869 Statute, the property shall be used "as a public park . . . free to all persons forever" – and that the City's allowance of the OPC on that site pursuant to the Operating Ordinance and Use Agreement "is inconsistent with the Illinois's legislature's restriction." Dkt. No. 65-1 at 18. In ruling on Defendants' motion to dismiss, therefore, the Court described Plaintiffs' claim as alleging a

violation of procedural due process on the theory that "Jackson Park – land held in the public trust – [is] in imminent danger of alteration, and thus that Defendants are depriving them of their rights under the [Illinois] public trust doctrine." Dkt. No. 93 at 12.

Being rooted in their public trust claim, Plaintiffs' claim of a deprivation necessarily fails along with the failure of the public trust claim. As just explained in Part I, supra, the OPC is a legitimate use of parkland authorized by the Museum Act and consistent with the 1869 Statute, a use that will enhance Jackson Park as a park. There is no "deprivation" here of anyone's rights in parkland under the public trust doctrine, and therefore no foundation for Plaintiffs' due process claim.

The result is the same to the extent that Plaintiffs' due process claim is based on Defendants' alleged violation of other substantive state laws governing the transfer and operation of parkland.[7] As explained below in Parts III and IV, Defendants' actions are in accord with state law. Here too, Plaintiffs' derivative due process claim fails for that reason alone.

Plaintiffs' due process claim fails in any event because a violation of state law cannot form the basis for a federal due process claim. It is well-established that "a failure to follow state statutes or state-mandated procedures does not amount to a federal due process claim of constitutional magnitude." Dietchweiler by Dietchweiler v. Lucas, 827 F.3d 622, 629 (7th Cir. 2016). The Seventh Circuit has repeatedly held that "[f]ailure to implement state law violates

[7] Plaintiffs originally contended that their due process rights were violated because the Park District's transfer of the Jackson Park site to the City and the City's entry into a contract with the Foundation to develop the OPC are purportedly unauthorized under the Illinois Constitution and state statutes. See Compl. ¶ 60 (Park District Code, 70 ILCS 1205/0.01 et seq.); ¶¶ 6, 63-64 (Article VII, section 10 of the Illinois Constitution); ¶¶ 65-68 (Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq.); ¶¶ 69-78 (Local Government Property Transfer Act, 50 ILCS 605/1 et seq.); ¶¶ 79-81 (Park District Aquarium and Museum Act). In Paragraph 60, the Complaint wrongly calls the Park District Code the "Park District Act." Paragraph 65 also incorrectly attributes statutory language to the Intergovernmental Cooperation Act; the quoted language actually appears in sections 1(d) and 2(b) of the Local Government Property Transfer Act.

that state law, not the Constitution." River Park, Inc. v. City of Highland Park, 23 F.3d 164, 166-67 (7th Cir. 1994); see also Coniston Corp. v. Vill. of Hoffman Estates, 844 F.2d 461, 467 (7th Cir. 1988) ("A violation of state law is not a denial of due process of law."). Thus, "the due process clause does not require, or even permit, federal courts to enforce the substantive promises in state laws and regulations." Mid-American Waste Sys., Inc. v. City of Gary, 49 F.3d 286, 290 (7th Cir. 1995). Otherwise, "federal courts would sit effectively as appellate tribunals over every state proceeding," Tucker v. City of Chicago, 903 F.3d 487, 495 (7th Cir. 2018), and "it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law," Archie v. City of Racine, 847 F.2d 1211, 1217 (7th Cir. 1988) (en banc) (quoting Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 106 (1984)). Plaintiffs themselves have recognized that their "claimed state law violations may not form the basis for a federal due process action." Dkt. No. 65-1 at 24.

Thus, even if Plaintiffs could show that development of the OPC was somehow improper under state law (and they cannot), that still would not establish any violation of the federal Due Process Clause.[8]

C. Plaintiffs Have No Property Interest In The OPC Site.

Finally, Plaintiffs' due process claim also fails because Plaintiffs have no cognizable, constitutionally protected property interest in the OPC site. Thus, there can be no due process violation as a matter of law. See Cole v. Milwaukee Area Tech. Coll. Dist., 634 F.3d 901, 904 (7th Cir. 2011).

[8] The Lucas case is not to the contrary. Unlike Plaintiffs here, the plaintiffs in Lucas alleged a due process violation based on the General Assembly's purportedly inadequate procedure for amending the Museum Act. See Lucas II, 160 F. Supp. 3d at 1064-65. Lucas did not consider whether, much less hold that, a municipality's mere violation of state law can form the basis of a federal due process claim. To the extent that Lucas could be read as supporting that proposition, it is inconsistent with established Seventh Circuit precedent, such as cases like Tucker and River Park, which hold that a violation of state law does not violate due process.

Plaintiffs contend that their protected property interest is a "fractional beneficial interest in the Jackson Park site" that all residents hold under the Illinois public trust doctrine. Compl. ¶ 82. Although the Court found this "fractional beneficial interest" sufficient to give rise to Article III standing, Dkt. No. 93 at 11–14, that is a different question from whether Plaintiffs have a protected property interest for purposes of a due process claim. See Booker-El v. Superintendent, Ind. State Prison, 668 F.3d 896, 899–900 (7th Cir. 2012) (noting that "standing and entitlement to relief are not the same thing" and holding that, although a plaintiff had standing to raise a due process claim, plaintiff had no constitutionally protected property interest in the subject of the dispute). A due process claim is fundamentally concerned with the *legal nature*, under State law, of the plaintiff's alleged property interest, see Kvapil v. Chippewa Cty., 752 F.3d 708, 713 (7th Cir. 2014); Bd. of Regents of State Coll. v. Roth, 408 U.S. 564, 577–78 (1972), while the Article III standing question is focused on whether the alleged injury to the particular plaintiff (accepting the allegations as true) is sufficient to create a case or controversy.

Illinois law – including precedent rejecting a challenge to a museum building in Jackson Park – is clear that a purported "interest as citizens entitl[ing] [plaintiffs] to enjoy the park and to desire that it be preserved" and "remain untouched" does not rise to the level of a due process property interest. Petersen v. Chicago Plan Comm'n, 302 Ill. App. 3d 461, 467 (1st Dist. 1998) (dismissing challenge to Museum of Science and Industry's expansion in Jackson Park for lack of a protected property interest); see also Residences at Riverbend Condo. Assoc. v. City of Chicago, 5 F. Supp. 3d 982, 987-88 (N.D. Ill. 2013) (relying on Petersen to hold that opponents of development project had no due process property right in how land would be used). Thus, while Illinois law is clear that individuals can rely on their "fractional beneficial interest" in parkland to plead a state-law public trust claim, that "fractional beneficial interest" is not a

property interest of the sort the Due Process Clause protects. As the U.S. Supreme Court has explained, a due process claim is premised on "the *private* interest that will be affected by the official action." Mathews, 424 U.S. at 335 (emphasis added).

In Paepcke, the Illinois Supreme Court recognized the key distinction between a "*public* property right to enforce the public trust," 46 Ill. 2d at 340 (emphasis added), and a "*private* property right to continuation of the park use of which even the legislature [could not] deprive" plaintiffs. Id. at 338 (emphasis added). The court held that all Chicago residents could rely on a "public property right" created by the 1869 Statute "to enforce the public trust" under state law. Id. at 340–41. But a subset of those same plaintiffs with an even stronger interest in the park – those citizens who owned land adjacent to the park – had no "private property interest" sufficient to assert a constitutional claim. Id. at 338 (relying on Reichelderfer, which held at 287 U.S. at 317–19 that, despite legislative commitment that lands were "perpetually dedicated and set apart as a public park," neighboring landowners had no private property interest in public park sufficient to support a claim under the Due Process Clause). In other words, the same plaintiffs who had a "fractional beneficial interest" under the 1869 Statute, and therefore could assert a state-law claim for violation of the public trust, did not have a private property right protected by the federal constitution. For this reason as well, Plaintiffs' due process claim fails.[9]

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[9] Insofar as Lucas II concluded that a "*public* property right to enforce the public trust" created a *private* property right sufficient to state a due process claim, 160 F. Supp. 3d at 1064 (emphasis added), that is inconsistent with cases like Peterson, which holds that a desire to preserve public parkland "does not rise to the level of a . . . constitutionally protected interest." 302 Ill. App. 3d at 467. In any event, the court in Lucas considered a procedural due process claim in the context of Rule 12(b)(6), emphasizing that it was "[c]onstruing the allegations in Plaintiffs' favor." Lucas II, 160 F. Supp. 3d at 1065; see also Lucas I, 2015 WL 1188615, at *10 (same). This case has progressed to summary judgment, and Plaintiffs, with the benefit of abundant opportunities to conduct discovery, have the burden of producing evidence that could establish a constitutionally protected property interest in Jackson Park. Yet they can point to nothing more than the 1869 Statute – the same statute at issue in Paepcke.

D. Count I Does Not State A Takings Claim.

Finally, although Count I purports to raise a takings claim, see Compl. ¶ 85, Plaintiffs have clearly abandoned this claim by offering no response to Defendants' opposition to this claim at the Rule 12 stage. Dkt. No. 49-1 at 19; see generally Dkt. No. 65-1. This was understandable, for such a claim fails under the plain language of the Takings Clause, which states: "nor shall *private* property be taken for public use, without just compensation." U.S. Const., Amdt. 5 (emphasis added). No taking occurs where, as here, the property is already public. See, e.g., Stop the Beach Renourishment, Inc. v. Florida Dep't of Envtl. Prot., 560 U.S. 702, 715 (2010) ("the Takings Clause bars the State from taking *private* property without paying for it") (emphasis added); Reichelderfer, 287 U.S. at 323 ("[p]roperty was not taken" when legislation authorized new development on public parkland).

III. State Law Authorizes The Transfer Of Park District Land To The City (Count III).

Plaintiffs allege that the Park District's transfer of parkland to the City for use as the OPC is ultra vires under state law. But state law plainly authorizes these actions.

The Local Government Property Transfer Act ("Property Transfer Act"), 50 ILCS 605/.01, et seq., expressly permits property transfers like the one here. Under Section 2, one municipality seeking to acquire property from another, whose territory is within or coextensive with the former's borders, may "by ordinance declare that it is necessary or convenient for it to use, occupy or improve any real estate held by [the transferring municipality] in the making of any public improvement or for any public purpose." 50 ILCS 605/2. Once the acquiring municipality so declares, "the corporate authorities of the [transferring] municipality shall have the power to transfer all of the right, title and interest held by it immediately prior to such transfer, in and to such real estate . . . upon such terms as may be agreed upon by the corporate authorities of both municipalities." Id. The Operating Ordinance contains the declaration

required by the Property Transfer Act, see SUMF, Ex. A, Ex. 9 thereto, at 85886 (§ 2), and as discussed in section I.B.1, supra, the OPC will be a public improvement that advances important public purposes.

Plaintiffs contend that the Property Transfer Act does not apply because the Foundation, not the City, will be "using, occupying, or improving" the site. Compl. ¶ 72. This is both factually and legally incorrect. Factually, under the Use Agreement, the City retains control over the use, occupancy, and improvements of the land and will hold title to the improvements on the property. See SUMF, Ex. A, Ex. 9 thereto, Ex. D thereto (Use Agmt.) §§ 2.1, 4.4. Legally, the Property Transfer Act does not prohibit the acquiring municipality from contracting with a third party to assist in improving the transferred land. And the Museum Act expressly grants authority to enter into such a contract. See supra at 19-22.

Article VII, section 10(a) of the Illinois Constitution also authorizes the transfer. This section permits units of local government to "transfer any power or function, in any manner not prohibited by law or ordinance." Likewise, another statute – the Intergovernmental Cooperation Act – allows the "powers, privileges, functions, or authority exercised or which may be exercised by a public agency of [the State of Illinois]," including a municipality, to be "transferred . . . with any other public agency . . . except where . . . expressly prohibited by law." 5 ILCS 220/3. This package of rights necessarily includes the power to use and control the land on the site.

Plaintiffs contend that neither of these provisions applies because they only allow transfers not prohibited by law. Compl. ¶¶ 63, 67. But the laws that Plaintiffs claim prohibit the Park District's transfer to the City – the Park District Code and Article VIII, Section 1(a) of the Constitution – do no such thing. The Code places no restrictions on the Park District or its property. See 70 ILCS 1205/1-2(d) ("Nothing set forth herein shall be construed to disturb, alter,

amend, limit, or broaden the powers of the Chicago Park District or any other park district heretofore formed under special charter."). And Article VIII, Section 1(a) merely requires public funds, property, or credit to be used for public purposes – a requirement the OPC easily satisfies. See supra, section I.B.1.

IV. The 2016 Amendment To The Museum Act Applies In This Case (Count IV).

Plaintiffs seek a declaration that the 2016 Amendment to the Museum Act – which added language expressly identifying presidential centers as a type of museum authorized by the Museum Act, see Compl., Ex. B. – is inapplicable because its "substance . . . cannot be made retroactive." Compl. ¶ 101. When Defendants sought judgment on the pleadings on this count, Plaintiffs' brief in response ignored the claim, making no attempt to defend it. See Dkt. No. 65-1. In any event, there is no retroactivity issue here. The activities Plaintiffs challenge – the Park District's transfer of land to the City, and the City's authorization of the OPC on that land – all post-date the 2016 amendment. It was not until October 2018 that the City enacted the ordinance (the Operating Ordinance) authorizing the City to accept the OPC site from the Park District and enter into an agreement with the Foundation. The 2016 Amendment to the Museum Act had no "retroactive" effect on any of these activities.

Regardless, even assuming that the 2016 Amendment applied "retroactively" in this case, such an application would be entirely lawful. If the General Assembly expresses an intent to apply a statute retroactively, then the statute has retroactive application unless retroactivity would violate a constitutional right. See In re Marriage of Duggan, 376 Ill. App. 3d 725, 728 (2d Dist. 2007). Here, the General Assembly stated that the amendment was merely "declaratory of existing law." Compl., Ex. B. That is a clear statement of "intent to give the amendment maximal retroactive effect." First Mortg. Co. v. Dina, 2017 IL App (2d) 170043, ¶ 29; see also id. ¶ 31

("[T]he difference between a statement that an amendment is declarative of existing law and one that it should have full retroactive scope is one of form only.").

Nor would applying the amendment retroactively be unconstitutional. Plaintiffs contend that the amendment is an "illegal ex post facto act." Compl. ¶ 11. But "[t]he Federal and Illinois ex post facto clauses . . . apply only to retroactive measures which are either criminal or penal in nature." In re Samuels, 126 Ill. 2d 509, 523–24 (1989). And the 2016 Amendment to the Museum Act does not penalize or criminalize anything. As shown immediately below, moreover, there is nothing to Plaintiffs' claim that the amendment is unconstitutional special legislation.

V. The 2016 Amendment Is Not Unconstitutional Special Legislation (Count V).

Plaintiffs seek to void the 2016 Amendment under the Illinois Constitution's Special Legislation Clause, which prohibits a "special or local law when a general law is or can be made applicable." Ill Const. 1970, art. IV, § 13. The clause guards against classifications that "confer[] a special benefit or privilege upon one person or group and exclud[e] others that are similarly situated." Big Sky Excavating, Inc. v. Ill. Bell Tel. Co., 217 Ill. 2d 221, 235 (2005). But even a statute containing a classification that "discriminates in favor of a select group" will survive challenge so long as the classification is not arbitrary. See Elementary Sch. Dist. 159 v. Schiller, 221 Ill. 2d 130, 149 (2006).

The 2016 Amendment does not violate the Special Legislation Clause because it creates no exclusionary classification. It merely enumerates some of the things – presidential libraries, centers, and museums – "includ[ed]" within the preexisting classification (museums). See Compl., Ex. B. The amendment does not exclude any entity wishing to operate a museum in a

public park, for the class of entities comprising museums is no smaller than it was before. See Elementary Sch. Dist. 159, 221 Ill. 2d at 153.[10]

In any event, in a special legislation challenge, a statute that does not affect a fundamental right or involve a suspect classification is subject only to rational basis review. Crusius v. Ill. Gaming Bd., 216 Ill. 2d 315, 325 (2005). The 2016 amendment easily satisfies that deferential standard. See N. Ill. Home Builders Ass'n, Inc. v. Cty. of Du Page, 165 Ill. 2d 25, 40 (1995) (court "need only determine whether a rational basis exists for the legislative action, not the wisdom of the classification"); People ex rel. Lumpkin v. Cassidy, 184 Ill. 2d 117, 124 (1998) ("The judgments made by the legislature in crafting a statute are not subject to courtroom fact finding."). In light of the myriad public benefits that presidential centers in public parks provide, see supra at I.B.1, it was certainly rational for the General Assembly to conclude that presidential centers "serve valuable public purposes, including, but not limited to, furthering human knowledge and understanding, educating and inspiring the public, and expanding recreational and cultural resources and opportunities," 70 ILCS 1290/1. Plaintiffs may disagree or believe that other (unidentified) enterprises should also be allowed in parks. For purposes of the rational basis test, however, courts may not "second-guess the wisdom of a statute that is rationally related to a legitimate state interest." Crusius, 216 Ill. 2d at 332.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court enter judgment in their favor, and against Plaintiffs, on all Counts remaining in the Complaint.

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[10] It therefore does not matter whether, as Plaintiffs contend, the amendment was enacted to benefit "only one entity" – the Foundation – by siting the OPC in a public park. Compl. ¶¶ 108-09; see Chicago Nat'l League Ball Club, Inc. v. Thompson, 108 Ill. 2d 357, 365–67 (1985) (declining to consider legislative motive behind amendment in special legislation analysis).

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Respectfully submitted

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